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CARRIE K.S. OKINAGA, 5958
 Corporation Counsel
 DEREK T. MAYESHIRO, 6858
 Deputy Corporation Counsel
 City and County of Honolulu
 530 South King Street, Room 110
 Honolulu, Hawaii 96813
 Telephone: (808) 523-4890
 Facsimile: (808) 523-4583
 e-mail: dmayeshiro@honolulu.gov

FILED IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

at 6 o'clock and AM
 SUE BEITIA, CLERK

DEC 29 2006

Atorneys for Defendant
CITY AND COUNTY OF HONOLULU

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF HAWAII

THE ESTATE OF ERIC A.) Civil No. CV04 00428 LEK
POWELL, THROUGH PERSONAL)	
REPRESENTATIVE MARY K.) DEFENDANT CITY AND COUNTY
POWELL; THE ESTATE OF JAMES)	OF HONOLULU'S SEPARATE AND
D. LAUGHLIN, THROUGH) CONCISE STATEMENT OF FACTS	
PERSONAL REPRESENTATIVE) IN SUPPORT OF MOTION FOR	
RAGINAE C. LAUGHLIN; MARY K.) PARTIAL SUMMARY JUDGMENT;
POWELL, INDIVIDUALLY;) DECLARATION OF DEREK T.
RAGINAE C. LAUGHLIN,) MAYESHIRO; EXHIBITS "A-D, F,
INDIVIDUALLY; CHLOE) G"; DECLARATION OF RALPH
LAUGHLIN, A MINOR, THROUGH) GOTO; EXHIBIT "E";	
HER NEXT FRIEND, RAGINAE C.) DECLARATION OF ALAN HONG;
LAUGHLIN,) CERTIFICATE OF SERVICE
)
Plaintiffs,) Trial: April 3, 2007
)
vs.)
)
CITY AND COUNTY OF)
HONOLULU,)
)

Defendant.)
and)
CITY AND COUNTY OF)
HONOLULU,)
Third-Party Plaintiff,)
vs)
UNIVERSITY OF HAWAII, a body)
corporate; JOHN DOES 1-10, JANE)
DOES 1-10, DOE)
CORPORATIONS and DOE)
ENTITIES,)
Third-Party Defendants.)

**DEFENDANT CITY AND COUNTY OF HONOLULU'S
SEPARATE AND CONCISE STATEMENT OF FACTS
IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56.1 of the *Local Rules of Practice for the United States District Court for the District of Hawaii*, Defendant CITY AND COUNTY OF HONOLULU (hereinafter as "City") hereby respectfully submits its concise statement of facts in support of its Motion for Summary Judgment:

FACTS

EVIDENTIARY SUPPORT

1. Hanauma Bay Nature Preserve is a beach park and Witches Brew is an area of ocean water adjacent to Hanauma Bay. See Declaration of Ralph Goto at Par. 4

2. At the time this incident occurred, warning signs specifying strong current were posted at Hanauma Bay pursuant to Act 190.

See Declaration of Ralph Goto at Par. 5

3. At the time of the incident, the design and placement of the Act 190 signs at Hanauma Bay were approved by the chairperson of the board of land and natural resources.

See Declaration of Ralph Goto at Par. 6

4. At the time of the incident, the Act 190 signs at Hanauma Bay were not vandalized, removed, or illegible.

See Declaration of Ralph Goto at Par. 7

5. No one witnessed what happened to the decedents after they swam past the coral reef and before a lifeguard saw one of the decedents coming around Witches Brew Point.

See Exhibit "F", Pg. 93, Line 19 – Pg. 94, Line 10; Exhibit "G", Pg. 47, Lines 14-17; Declaration of Ralph Goto at Par. 11

6. Plaintiffs' experts believe that strong currents led the decedents to the Witches Brew area.

See Exhibit "G", Pg. 49, Lines 20-25 and Pg. 50, Lines 8-10.

7. With respect to their claims of improper water rescue services, Plaintiffs have not plead gross negligence or wanton conduct.

See Exhibit "A" at Par. 15

8. Plaintiffs' water safety expert has no information that City lifeguards were grossly negligent for not seeing the decedents swim toward Witches Brew.

See Exhibit "G", Pg. 40, Lines 5-15

9. The alleged Hanauma Bay visitor center employee referenced in Count II of the Complaint is not a City employee or agent.

See Declaration of Alan Hong at Par 5.

10. Even if the alleged visitor center employee was a City employee, she did not "direct the decedents to swim at the southern edge of the bay" as alleged in Par. 20 of the Complaint.

See Exhibit "F", Pg. 40, Lines 3-23 and Pg. 56, Line 22 – Pg. 57, Line 19.

DATED: Honolulu, Hawaii, December 29, 2006.

CARRIE K.S. OKINAGA
Corporation Counsel

By:


DEREK T. MAYESHIRO
Deputy Corporation Counsel
Attorney for Defendant
CITY AND COUNTY OF HONOLULU